LABOUR DEPARTMENT

The 31st July, 1979

No. 11(112)-3Lab-79/8178.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s. Hindustan Machine Tools Ltd., Pinjore:—

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 74 of 1975

between

THE WORKMEN AND THE MANAGEMENT OF M/S. HINDUSTAN MACHINE TOOLS LTD., PINJORE

Present :—

Shri Anand Sarup, Shri J. C. Verma and Shri R. K. Garg, for the workmen.

Shri Bhagirath Dass, for the management.

AWARD

By order No. ID/AMB/76/12904. dated 13th April, 1976, the Governor of Haryana, referred the following dispute between the management of M/s. Hindustan Machine Tools Ltd., Pinjore and its workmen, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

> Whether the workmen are entitled to grant of bonus for the year 1974-75 ? If so, with what details ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by my learned predecessor on 20th September, 1976:—

> "Whether the workmen are entitled to grant of bonus for the year 1974-75 ? If so, with what details ?

And the case was fixed for the evidence of the workmen. The management was also directed to supply to the workmen copies of annexures A and Y filed by them and the workmen were directed to file their objections. Reply to the objections were filed. The reference is whether the workmen are entitled to the grant of bonus for the year 1974-75 ? If so, with what details" ?

Both the parties admitted that the bonus for the year 1974-75 has been paid to the workmen at the rate of 4 per cent. The workmen demands bonus over and above 4 per cent. The demand of the workmen was for 20 per cent bonus. Then following issues were framed on 24th February, 1977:—

(1) Whether the workmen are entitled to grant of bonus for the year 1974-75 over and above 4 per cent already paid ? If so, to what extent and to what details ?

(2) Whether the settlement, dated 2nd December, 1972, alleged to have been arrived at between the parties is binding on the parties ?

(3) Whether the above said settlement can be ignored in view of the amended law ?

(4) Relief.

And the case was fixed for the evidence of the workmen. The workmen then filed rejoinder to the reply of the management and prayed that the management be directed to give further details. Thereafter, H.M.T. workers union was desolved and merged in H.M.T. Karmik Sangh. H.M.T. Karmik Sangh prayed for adjournments which was granted, as the management did not object. Then the union demanded of better particulars of some documents and stated that in absence of these particulars, they are not able to lead evidence. The management objected. The parties were heard. Some particulars by the management were supplied. Then the workmen wanted to verify the correctness of several amounts. The workmen were directed to give all

details and particulars of their objections and discrepancies and the case was fixed for arguments on that point. Then the representative for the workmen admitted that details and particulars as per their objections had been supplied by the management. The witness had been summoned by the workmen but the management stated that that witness may be treated as their own witness, to which after some discussions, the workmen agreed. Because that very witness was summoned by the workmen, hence that witness was examined as M.W.-1. M.W.-1 is Shri J. P. Gupta, Joint Controller of the Accounts of the management. M.W.-1 deposed that the management is a limited company. The Chartered Accountants are the auditors of the company for the year 1974-75. The financial year commences from 1st April. The company has several units. Separate balance sheets are prepared for each unit and they were consolidated. He brought balance sheet bearing signatures of the auditors. Shri Nanda was the Chartered Accountant. It was signed by Shri A. K. Nanda, the partner. It is Exhibit M-1. Exhibit M-2 is the copy of profits and loss accounts. Exhibit M-3 in 14 pages in the schedule, forming part of the balance sheet, for profit and loss accounts. Exhibits M-4 and M-5 are the statement of bonus payable under the Act. He further stated that all the documents were correct as per the original company's accounts. He stated that the management has disbursed the bonus to the tune of Rs. 7,11,200, whereas the bonus payable as per calculations came to Rs. 5,82,265. In cross-examination, he stated that Exhibits M-4 and M-5 were prepared by him or under his direction. Although Exhibit M-5 was based on data given by head office for the purposes of income-tax. He admitted that share capital on 1st April, 1974, is entered as nil but it is included in the amount shown against head office current amount schedule "E" which shows a figure of Rs. 12,60,65,283 as closing on 31st March, 1974. He admitted that consolidated accounts were not with them. He could not give the amount against share capital allotted to this factory at Pinjore, on 1st April, 1974. He again admitted that on 31st March, 1974 and 31st March, 1975 "nil" amount is shown against reserve and surplus as per the balance sheet. But it was his opinion that this amount has also been included in the amount pertaining to head office current account schedule "E". A sum of Rs. 2,08,00,772 has been shown against the investment at point "A". He gave the details of accounts. A sum of Rs. 66,42,062 was shown as inter unit transfer, chart whereof was filed by this witness. He admitted that schedule "F", Exhibit M-3 is not as per required under the Income Tax Act. He further stated that the whole amount of schedule "F", Exhibit M-3 has been added in Exhibit M-4. He also admitted in cross-examination that the assets shown in Exhibit M-3 has not been shown on revaluation. These are as per books. It was not revalued. He was asked to state as to which accounts, viz., capital, loan, and reserve, the amount shown in column 4, Exhibit M-3 has been debited. He could not understand the question. He was further asked as to from where the amount entered in column 4 was drawn. He could not give this reply. He could neither admit nor deny whether this amount was advanced on capital. Then the management was directed to give break up of the amount shown at point "I" in Exhibit M-3 which the management agreed to supply. Exhibit M-3 was prepared for depreciation method adopted by the company at the headquarters. The depreciation method was shown in Exhibit M-6. He could not tell the principles adopted by the company on which the rates mentioned in Exhibit M-6 were adopted. This witness gives several details of amounts such as opening balance of head office accounts. The break up of that amount, the liquid capital allotted by the head office to this factory for working on 1st April, 1974 was Rs. 13,23,37,878. Several accounts were explained by the witness. He denied a suggestion that Exhibit M-5 was prepared incorrectly. He was asked to explain the amount shown at point "B" against repairs to machinery which he could not give at that time. He was further asked whether

that amount was spent on components replacement of gear box, or similar parts of machinery on which depreciation is charged. He could not tell without reference to records. Then M.W.-1 undertook to produce several documents which the management produced. The management filed documents, Exhibit M-8 to M-11 and closed their case. Then the case was fixed for the evidence of the workmen. The workmen examined Shri H. S. Kaul, Joint Secretary of H.M.T. Karmik Sangs as WW-1 who was an employee in the Accounts Department of the management. He stated that the workmen have received bonus at the rate of 20 per cent plus a Jersy for the year 1973-74. He proved a copy of settlement, Exhibit W-1 arrived at between the parties on 2nd December, 1972. He deposed that the said agreement was even then inforce. Neither parties served any notice of terminating that settlement and the workmen are entitled to receive bonus at the rate of 20 per cent for the year 1974-75 but the management paid only at the rate of 4 per cent. He further deposed that calculation done by the management was wrong. In cross-examination he could not say as how the calculation made by the management were wrong. He could not name the items which were wrong. The wrokmen then closed their case. Then the case was fixed for arguments. Several adjournments were granted for arguments. Once Shri Anand Sarup, Senior Advocate of the Punjab and Haryana High Court had appeared for the workmen to which the management had objected, which objection was overruled,—*vide* my detailed order, dated 27th September, 1978. Again thereafter, several adjournments were obtained by either of the parties. Arguments were heard at length. Part arguments were heard on 19th December, 1978. Again, part arguments were heard on 25th May, 1979. Then the case was fixed for hearing of remaining arguments on 8th June, 1979 and complete arguments were heard in detail on that day.

I have gone through the evidence of the parties oral as well as documentary and also have gone through the pleadings. I have also given due consideration to the arguments advanced by the representatives for the parties. Now I decide this case issuewise :—

ISSUE No. 1:

The case of the workman for the grant of bonus at the rate of 20 per cent is based on a settlement arrived at between the parties on 2nd December, 1972, which is Exhibit W-1. The demand of the workmen is regarding contractual bonus. The workmen have led their claim on the contract entered into between them and the management for giving them bonus at the rate of 20 per cent. I have gone through Exhibit W-1 also, which is the basis of the claim of the workmen. The management and the recognised union H.M.T. Karmik Sangh had previously also entered into some settlement, dated 21st December, 1971 and 6th July, 1972. The management had disbursed 45 days wages as bonus for the year 1971-72,—*vide* settlement, dated 6th July, 1972. But at that time new bonus formula was to be recommended by the bonus review committee appointed by the Government of India to review the operation of the payment of bonus Act. The management had earned a profit of Rs. 25.68 lacs and the workmen were not satisfied with payment of bonus at the rate of 8.33 per cent and they had rejected the said offer of the management and were agitating for more bonus. Payment of bonus at the rate of 8.33 per cent as the minimum as per law and payment of minimum bonus in view of good profits by the management could prove no incentive to increase productivity and profitability. Hence a formula was evolved. In order to reserve existing trends of productivity and cordial industrial relation, this settlement was entered into under section 12(3) of the Industrial Disputes Act. The settlement was to remain in force for a period of three years commencing from the financial year 1972-73 ending with financial year 1974-75. Para number 2 of the terms of the settlement reads as follows:—

> "That, however, in order to provide adequate incentive to the employees to increase productivity

both the parties mutually agreed to come out of the provisions contained under the payment of Bonus Act, 1965, and have further agreed to the following form for payment of bonus under section 34(2) of the said Act, viz., to apportion the net profit of this unit for the year, as per the audited profit and loss account, after providing for payment of due income tax, into 60:40 ratio subject, however, to a minimum bonus of 8.33 per cent and maximum bonus of 20 per cent to all the eligible employees as defined under the payment of Bonus Act, 1965.

This settlement was entered into in order to increase productivity and to provide adequate incentive to the employees to increase productivity. As per this settlement the bonus for the year 1974-75 had to be paid in the month of April. The settlement also provides for withdrawing from this agreed formula after giving a notice of 30 days to the other party and explaining the reasons, thereof. It shall be worthwhile to note that no party has given 30 days notice to the other party in the instant case and has not withdrawn from the said formula as per the settlement.

The representative for the workmen argued that this settlement is inforce and the net profits are so much as the management can very well afford to pay bonus at the rate of 20 per cent for the year 1974-75.

The representative for the management argued that the settlement is no more in force after coming into force of the Ordinance and the Act number 23 of 1976. It is obligatory for the management to pay minimum bonus to the workmen at the rate of 4 per cent. The representative for the management argued that only the settlement by which the bonus is linked with production or productivity have been saved and none other. He further argued that in the said settlement, Exhibit W-1 relied on by the workmen, bonus is not linked with production or productivity, hence the settlement goes away and the payment of bonus has been made in accordance with the Ordinance and the Act, 1976.

The representative for the workman argued that the settlement still stands as far as payment of bonus for the year 1974-75 is concerned. No law could undue, and even the amending Ordinance, 1975 and the Act has not undone the customary or contractual bonus. He further argued that rights vested cannot be digested, and fiscal statutes should be construed very strictly so as they might not divest the vested rights, and/or might operate retrospectively, creating liabilities in the past. He argued that this was the main principle, rather underlining principle of the construction of fiscal statute. He cited A.I.R. 1965 Supreme Court, 1970 para number 3 at page 1973, and A.I.R. 1978, Supreme Court 806. He argued that the aim of the amendment was not regarding these settlements which had already expired and were no longer in force. He further argued that section 34 has no application and, such settlements which are fair have not been undone by the amending Ordinance and Act. He further argued that the workmen had become entitled to the payment of this bonus in the month of April, 1975, and amending ordinance came into operation in the month of September, 1975. The management should have paid bonus at 20 per cent in April, May, June, July or August. He further argued that had the management paid bonus prior to the amending ordinance came into force in September, 1975, the workmen would have received the bonus at the rate of 20 per cent and they would not have been deprived of 20 per cent bonus. By delaying payment of bonus, for six months or so, the management is taking undue advantage of the amending law which they should not be allowed to do. The case has been argued for three days and law has been thrashed in order to reach the spirit of the amending ordinance and the Act. The main contention of the management is that the settlement is no more valid as per the

said amending ordinance and the Act. The representative for the workmen argued that there is no paucity of funds with the management and the management has earned huge profits. The chart prepared by the workmen is correct as per law and the settlement and several items in the balance-sheet and profits and loss accounts of the management are incorrect, which is evident from the statement of MW-1 The statement of MW-1 has several discrepancies, inaccuracies, inconsistencies and contradictions. Hence the balance-sheet and profits and loss accounts of the management is not worth relying. Several items have remained unexplained by MW-1 which raises a presumption that wrong amount have been shown by the management in their documents against several heads. In these circumstances the Tribunal should rely on the chart prepared by the workmen and the Tribunal should not rely on the documents of the management. The management is in a position to pay 20 per cent bonus. In this case, I have to construct or interpret the provisions of the amending ordinance and the Act and effect thereof on this settlement. If the workmen, as per law, are entitled to receive bonus inview of the said settlement. The management has to pay it. The representative for the management also relied on 1966, AIR 1089. Although it is clear that in the settlement, Exhibit W-1, the basis of the workmen case, bonus is not linked with production and productivity although with a formula payment at the rate of 20 per cent bonus has been agreed to for increasing productivity and for creating adequate incentive to increase productivity and profitability. In order to reach the conclusion of law, I put the following question to the representative for the management in arguments :

Question —Had the management paid bonus at the rate of 20 per cent in the month of April May, or June, or prior to coming into force of the amending Ordinance Act in the month of September 1975, could the management recover that amount from the workmen? The representative for the management replied in the negative. He plainly stated that the management could not recover. I again put another question to the representative for the management as given below :—

> Had such payment at the rate of 20 per cent, as per the said settlement, Exhibit W-1, been made and had the Government referred to me the question whether the payment was legal or justified or not ? what would have been my answer to that reference ? This question of mine was also replied by the representative for the management that the answer would have been "justified and legal".

In view of these replies of the representative of the management, I reach the conclusion that the management is arguing a case wherein they are saying a fact as illegal by delaying the occurrance of that fact. That can never be the aim and purpose of law. No party can take advantage of causing delay by his own acts. In such circumstances, I think by delaying payment at the rate of 20 per cent, the management have incurred a liability to pay interest also. But I am not considering that aspect of the matter. Although the parties have filed written arguments also. The controversy is regarding law. The learned representative for the management has argued that the parliament has full rights to extinguish any right of whatever kind by taking away the remedy, flowing from the so called vested right. There is no vested right. It was only a contractual right. The contractual right flowing from the agreement or settlement has been referred to in section 31-A of the Payment of Bonus Act and this settlement did not relate to production or productivity, the workman cannot claim under it. He further argued that it is like a case of bad debt where the debt subsists but remedy is lost. This argument did not find favour with me. In case of debts, law of limitation has clearly prescribed the period for initiating a legal action but in the case of industrial dispute for a

claim to bonus, no such period has been prescribed. Moreover the workmen have claimed bonus for the year 1974-75, which became payable in April, 1975, and the reference was made in the year 1976. The law of limitation has not barred the remedy of the workmen. He had argued that section 31-A is retrospective in effect. He further argued that AIR 1965, Supreme Court page 1970 does not apply in this case as there is no ambiguity in this case, and the Legislature has taken away the remedy of the workmen. He further argued that the legislature has power to enact laws with retrospective effect. He argued that the law relating to the rights of widow under the Hindu Law do not apply in this case. The arguments of the representative for the management mainly is that the management could pay this bonus at the rate of 20 per cent within 8 months of 1st April, 1975 according to section 19 and in the meantime the ordinance came and it took away that right. He further argued that the ruling of the Hon'ble the Supreme Court in the L.I.C. case does not apply to this case as that was a public corporation and H.M.T. is a limited company.

On the contrary the learned representative for the workmen argued that the payment of bonus Act did not effect contractual bonus as well as customary bonus. It affects only on bonus based on profits or linked with production or productivity. He also argued that a construction, if is consistent that the fundamental rights and directive principles, should be adopted and a construction inconsistency therewith may not be adopted. He argued on 1st April, 1975, the bonus at the rate of 20 per cent became a property of the workmen and the H.M.T., which is in public sector, should not be allowed to deprive their own workmen of that property. It would be against the law of fundamental rights and directive principles. He argued that this is a case in which the Tribunal should award interest also at the rate of 12 per cent. He cited several rulings. All written arguments presented by both the representatives have been placed on the file. The representative for the workmen further argued that the amending ordinance came into force on 25th September, 1975 and it has not taken away the already existing rights. The ordinance is with prospective effect. He put a construction on section 34 which shall have effect for the time being inforce meaning thereby after 25th September, 1975. Therefore, he argued that section 34 does not render a settlement or contract or service condition entered into between the parties and rights and liabilities and created their from null and void. By a combind reading of section 31-A and section 34 he argued that section 34 does not effect the existing rights of the workers or the liabities of the employer incurred prior to 25th September, 1975. He argued that section 34 was not in the nature of curtailment of the rights of the workmen so as to nullify previous settlements. He argued that sectin 31-A was enacted to confer a position right and to restrict the negative operation of section 34. He further argued that the settlement in the present case expire on 1st April 1975. It was not in existence, hence the ordinance could not effect. There were only rights and liabilities to be enforced were created under that settlement. He argued that any other construction will amount to deprive the workmen of their right to receive the bonus as per the contract. He cited A.I.R. 1965 Supreme Court 1970. He also relied on A.I.R. 1976 Supreme Court 1955 and A.I.R. 1976 Supreme Court 806. The representative for the workmen gave a calculation in his written arguments. He also gave a calculation chart together with his arguments which I exhibited as WW-A, according to this chart, the available surplus is shown as 20181100-00 and allocable surplus as 8072440.

The learned representative for the management also argued that the chart produced by the workmen cannot be relied on as it has not been proved and the management cannot get opportunity of cross examining on this chart. The workmen had also filed calculation as per the payment of Bonus Act. I have given due consideration to all these arguments. The workmen had also filed a calculation

of bonus as annexure "A" to their statement of claim. The management did not assail this calculation. Similarly the workmen also failed to assail the balance-sheet and profits and loss accounts filed by the management. The representative for the workmen have argued that they calculated as per law and agreement. Now I discuss the law, facts and the arguments of the representatives for both the parties. Section 34 provides that the payment of bonus shall have effect. In this Act, except in section 31-A, nowhere it has been specifically provided that the whole Act shall come into operation with retrospective effect. If the law has to take effect retrospectively, then it is also the policy of law to specify a date from which the law shall take retrospective effect. Hence it cannot be argued that the whole of the Act has retrospective effect. If it is argued that it has retrospective effect, then the question might rise as to from which date it has retrospective effect. As far as I think, only section 31-A is with retrospective effect. Section 31-A saves the settlement or agreement with regard to such bonus, entered into between the parties prior to or after 25th September, 1976, linked with production or productivity and in that event also the quantum of bonus shall not exceed 20 per cent. Section 31-A saves such settlement even with retrospective effect in which the bonus is linked with production or productivity, but section 31-A does not render any other contracts or settlement nugative. Then section 31-A has not rendered other settlement or contracts with regards to bonus as illegal or invalid. Then comes section 34 on which the learned representative for the management based his arguments. Section 34 saved section 31-A and thereafter stated that the Payment of Bonus Act shall have effect notwithstanding anything inconsistent therewith in any settlement or contract of service for the time being in force. Therefore, section 34 dealt with such settlement and contract of service which were in force on the date the ordinance came into force. Section 34 enacted that only such settlement which were inconsistent with the Act and were in force on 25th September, 1975, shall not stand. Here the arguments of the learned representative for the workmen sounds reasonable that the settlement, dated 2nd December, 1972, expired on 1st April, 1975, hence section 34 even did not say that this settlement shall not stand, as this settlement was not in force on the date the ordinance came into operation. So the question of rendering the settlement invalid or illegal did not arise. The workmen had become entitled to receive bonus at the rate of 20 per cent and the management could pay it at any time after 1st April, 1975. The representative for the management argued that had they paid before expiry of 8 months of 1st April, 1975, it was penal for them. I cannot gather this meaning from the reading of section 19. It would have been penal on the part of the management had they not paid the bonus till the expiry of 8 months from 1st April, 1975, but they could pay it at any time after 1st April, 1975, within 8 months thereof. And had they paid it prior to 25th September, 1975, it was not penal on their part. A period of 8 months has been given to the employer to make the payment. It may be called a grace period. The management must pay within 8 months. And if they do not pay within 8 months it has penalising effect. But if they pay within 8 months and prior to the expiry of 8 months after the bonus became due, it could not penalise the management.

I failed to understand the reasoning behind the arguments of the management that it was legal and valid had they paid bonus to their employees at the rate of 20 per cent on 1st April, 1975, or thereafter prior to 25th September, 1975, i.e., prior to coming into force of the said ordinance, and if they pay it now it would be illegal and invalid. It means that the right had vested in the workmen on 1st April, 1975, to receive bonus at the rate of 20 per cent. The representative for the workmen also argued that even as per their chart giving calculation of bonus as per the Act the management is liable to pay bonus at the

rate of 20 per cent to which the representative for the management did not agree. But as said above the representative for the management agreed that had they paid bonus at the rate of 20 per cent prior to 25th September, 1975, it was legal and valid and had the dispute been referred for adjudication as to whether such payment was legal, valid or not the answer "that it was legal and valid" and correct.

It does not seem rationale that payment of bonus at the rate of 20 per cent for 1974-75 between the period from 1st April, 1975 to 25th September, 1975 being legal, valid and justified has been rendered illegal, invalid and unjustified by coming into force of the said ordinance. The principle of construction of law is to put a harmonious construction.

In these circumstances, I think it proper, just, legal and justified that the workmen who had become entitled to bonus for the year 1974-75 at the rate of 20 per cent on 1st April, 1975, should be paid so. So that they might also get justice. It shall be injustice to deny them that very right, that very property, that very amount of bonus which they could get on 1st April, 1975, as per their contract. I also here think it proper to say that section 31-A of the Payment of Bonus Act provides for payment of bonus based on profits or linked with production or productivity. It does not provide for bonus based on custom and contract. I could not find any provision in the Payment of Bonus Act against customary or contractual bonus. I decide issue number 1 in favour of the workmen holding that they are entitled to the grant of bonus for the year 1974-75 at the rate of 20 per cent.

ISSUE No. 2:

As far as this issue is concerned it does not arise. The settlement, dated 2nd December, 1972, created rights and liabilities for the years 1972-73, 1973-74 and 1974-75. I decide this issue like this that the workmen are entitled to receive bonus for the year 1974-75 in the way this settlement provided. The settlement was in operation for three years and the formula adopted in it was to be followed for the years 1972-73, 1973-74 and 1974-75 only. Clause 5 of the settlement reads that the above formula contained in the settlement shall be in force for a period of three years commencing from financial year from 1972-73 and ending with the financial year 1974-75 and thereafter the settlement came to an end.

ISSUE No. 3:

As per my above discussions, I decide this issue against the management as far as payment of bonus for the year 1974-75, which fell due on 1st April, 1975, is concerned.

ISSUE No. 4:

As per my observations given above, the workmen are entitled to bonus at the rate of 20 per cent for the year 1974-75 out of which they have already received bonus at the rate of 4 per cent. Now they are entitled to receive bonus for the year, i.e., 1974-75 at the rate of 16 per cent more. As per my findings on the issues I answer the reference and give my award that the workmen are entitled to the grant of bonus for the year 1974-75 at the rate of 20 per cent out of which they have already received bonus for this year at the rate of 4 per cent, now they are entitled to receive bonus at the rate of 16 per cent more.

Dated the 10th July, 1979.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

No. 665, dated 14th July, 1979

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

H. L. GUGNANI, Secy.

37784 CS(H)—Govt. Press, Chd.